Supreme Court, U. S.
FILED
AUG 2 1976
MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1975

NO. 75-1669

HARRY R. ILLMAN

Petitioner

vs.

OHIO STATE BAR ASSOCIATION

Respondent

PETITIONER'S REPLY BRIEF

HARRY R. ILLMAN
2210 Stirrup Lane Apt. K-7
Toledo, Ohio 43613
Petitioner
Pro Se

JOHN R. WELCH
ALBERT L. BELL
JACK C. HARRIS
HARLAN S. HERTZ
c/o Ohio State Bar Association
33 West 11th Avenue
Columbus, Ohio 43201
Counsel for Respondent

TABLE OF AUTHORITIES

	Page
In Re Gault, 387 U.S. 1	3
*Glasser v. U.S.*315 U.S. 60	2,3
Lessard v. Schmidt, 349 F. Supp. 1078	3
In Re Popp, 35 O.S.2d 142	2
Willner v. Committee, 373 U.S. 96	3

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

NO. 75-1669

HARRY R. ILLMAN

Petitioner,

vs.

OHIO STATE BAR ASSOCIATION

Respondent.

PETITIONER'S REPLY BRIEF

Petitioner concedes the argument that State Court have always had inherent power to enforce its own laws, rules, or regulations, which includes the right to discipline attorneys admitted to its Bar. Human nature, being what it is, there will always be censors, critics, and/or the over-zealous seeking to exercise power or authority. The Bar alone policies itself. Inherent in the power to punish is the power to destroy. Those who would exercise police powers could run rampant, unrestrained, and unreproved, unless curbed or restricted by the force of law. Petitioner calls upon this Court to police those who would police becuase there is no where else to turn. If this was not true, a form of anarchy would ensue. In policing whatever police powers or disciplinary powers etc., of whatever type in proceedings below, (civil, criminal, quasi-criminal, investigatory) the nature of the proceedings are guided by a general admonition from this court of long standing, i.e., the limitations of the Fourteenth Amendment, due process or fundamental fair play. If due process is accorded, the action can be upheld, otherwise not. To strike down and destroy a man in his chosen profession, without counsel when requested, is denial of due process.

Here, there is no denial of the salient facts in the Bar reply. To argue such facts would have necessitated repetition and the same would be emphasized rather than explained away, but the deplorable record stands as previously represented herein. Petitioner made a timely request for counsel on the basis of illness and financial inability to proceed in a proceeding which would make him sicker. There was no evidence that a continuance would be harmful or prejudical until counsel was obtained. This issue is not only the right of appointment of counsel as in criminal cases, but determination of such right where indigent as the dissent argues, or for a continuance to obtain counsel. The question being: does one, regardless of financial ability, have a right to request lawyering services when his back is to the wall? It is not disputed that five attorneys appeared for the Bar while defendant stood alone. The record is clear that a protest of being forced to proceed was claimed as denial of due process.

The Panel is the fact finding body of the Ohio Court. Assistance of Counsel before that Panel is essential in making a record for a Court of Review. The failure to protect such right in the first instance is error which is not cured by review before the Ohio State Court for the reason that that Court can only pass on fact adduced before the Panel. Presence of Counsel could have materially altered or marshalled the tacts for a more beneficial result. It can never be said as a matter of law that absence of assistance helped Petitioner. This court stated it more succinctly in syllabus 11 of *Glasser vs. U.S.*, infra. The Bar answer in fact multiplies the grievous errors, rather than mitigate them. The obvious does not require extended arguements!

Rule V (a) defines misconduct while sub-section (7) imposes a penalty. The two sections are in pari materia and must be construed together. How could punishment under (7) be applied to Petitioner never disbarred or reinstated as in such rule? Is this due process?

Petitioner takes the liberty of bringing additional authorities to the attention of this Court in argument to display the incongruous position taken by the Court below.

The Supreme Court of Ohio considered the right of an indigent to appointed counsel in commitment proceedings

(mental) in *Re Popp*, 35 O.S. 2d. 142 (1973). Since the patient was released, the issue became moot; this issue was not resolved yet Justice Brown, writing the dissent below and Chief Justice O'Neill dissented. As to whether the Chief Justice compromised his judicial integrity in Popp to avoid adverse ramifications of reasonable differences (Ruffalo) is an intriguing question. If so, then there should have been a 5-2 vote herein in the Court below.

Further authorities supplement the issues raised. *In re Gault*, 387 V.S. 1 held a juvenile was entitled to assistance of counsel in delinquency proceedings (civil) as a requirement of due process.

Lower Federal Courts have held there is a right to counsel in commitment proceedings. See *Lessard v. Schmidt* 349. F. Supp. 1078.

Willner v. Committee 373 U.S. 96.

Sub-syllabus (a) The issue presented is justiciable, since the claim of present right of Admission to the Bar of a State and denial of that right is a controversy. p. 102.

(b) The requirements of procedural due process must be met before a State can exclude a person from practicing law. p. 103.

Glasser v. U.S. 315 U.S. 60. The applicable syllabus:

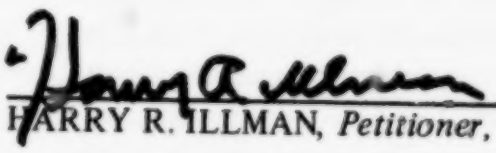
8. Every reasonable presumption is indulged against a waiver of fundamental rights such as the right of the accused to have the full and untrammeled assistance of counsel in the trial of a criminal case. p. 70.

9. The fact that a defendant in a criminal case is an experienced lawyer may be a factor in determing whether he waived his right to assistance of counsel, but it is not conclusive. p. 70. Here petitioner claimed he was "forced" to proceed.

10. The trial judge should protect the right of an accused to have assistance of counsel. p. 71.

11. The right to have the assistance of counsel is too fundamental to be made to depend upon nice calculations by courts of the degree of prejudice from its denial. p. 76.

All the foregoing are reduced to sententious cliches if certiorari is denied. The scope of this case is the right to a lawyer where a re uest is timely made or the right to a continuance until a law er is secured. The problem affects and is common to all. Everybody should be entitled to a lawyer on request. Certiorari must issue. Please.



HARRY R. ILLMAN, *Petitioner, Pro Se*

CERTIFICATION

The undersigned hereby certifies that five copies of the foregoing brief has been mailed by first class mail with postage prepaid to John R. Welch, Albert L. Bell, Jack C. Harris, Harlan S. Hertz c/o Ohio State Bar Association, 33 West 11th Avenue, Columbus, Ohio 43201, this day of July 1976.

HARRY R. ILLMAN, *Petitioner, Pro Se*